NOTIFICATION.

No. L.D. 1007—Legis. 3-51-25, dated Bangalore, 17th September 1951.

Ordered that the Railway Companies (Emergency Provisions) Bill, 1951 (Central Bill No. 70 of 1951), published in the *Gazette of India*, Part II, Section 2, dated the 1st September 1951, be re-published in the *Mysore Gazette*, for general information.

By Order of His Highness the Maharaja,

N. R. JAYA RAO,
Legal Remembrancer and Secretary to Government, Law Department.

PARLIAMENT OF INDIA.

The following Bill was introduced in Parliament on the 25th August 1951 :—

BILL No. 70 OF 1951

A Bill to make provision for the proper management and administration of railway companies in certain special cases.

BE it enacted by Parliament as follows :—

1. *Short title, extent and application.*—(1) This Act may be called the Railway Companies (Emergency Provisions) Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It applies to every railway company in respect of which a notified order has been issued under Section 3.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(*a*) "Companies Act" means the Indian Companies Act, 1913 (VII of 1913);

(*b*) "directors" means the directors appointed under Section 3;

(*c*) "notified order" means an order notified in the Official Gazette;

(*d*) "prescribed" means prescribed by rules made under this Act;

(*e*) "railway company" means any company registered under the Companies Act or any law repealed thereby for the purpose of making and working or making or working a railway, whether alone or in conjunction with other purposes.

3. *Power of Central Government to apply Act to any railway company and to appoint directors thereof.*—(1) Where the Central Government is of opinion that a situation has arisen in the affairs of a railway company which—

(*a*) has prejudicially affected the convenience of persons using the railway administered by the railway company, or

(*b*) has caused serious dislocation in any trade or industry using the railway, or

52

(*c*) has caused serious unemployment amongst a section of the community, the Central Government may, by notified order, apply the provisions of this Act to the railway company and appoint as many persons as it thinks fit to be directors of the railway company for the purpose of taking over its management and administration.

(2) The power to appoint directors under this section includes the power to appoint any individual, firm or company to be the managing agent of the railway company on such terms and conditions as to the Central Government may seem fit.

4. *Effect of notified order appointing directors or managing agents.*—On the issue of a notified order under Section 3,—

(*a*) all persons holding office as directors of the railway company immediately before the issue of the notified order shall be deemed to have vacated their offices as such ;

(*b*) any contract of management between the railway company and any managing agent thereof holding office as such immediately before the issue of the notified order shall be deemed to have terminated ;

(*c*) the managing agent, if any, appointed under this Act shall be deemed to have been duly appointed in pursuance of the Companies Act and the memorandum and articles of association of the railway company, and the provisions of the Companies Act and of the memorandum and articles shall, subject to the other provisions contained in this Act, apply accordingly, but no such managing agent shall be removed from office except with the previous consent of the Central Government ;

(*d*) the directors shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the railway company is, or appears to be, entitled, and all the property and effects of the railway company shall be deemed to be in the custody of the directors as from the date of the notified order ;

(*e*) the directors shall be for all purposes the directors of the railway company duly constituted under the Companies Act, and shall alone be entitled to exercise all the powers of the directors of the railway company, whether such powers are derived from the Companies Act or from the memorandum or articles of association of the railway company or from any other source.

5. *Powers and duties of directors.*—(1) Subject to the control of the Central Government, the directors shall take such steps as may be necessary for the purpose of efficiently managing the business of the railway company and, in particular, the directors shall have power, notwithstanding anything contained in the Companies Act or in the memorandum or articles of association of the railway company,—

(*a*) to choose one of their number to be the chairman, and to delegate to him or to any one or more of the directors all or any of their powers ;

(*b*) with the previous approval of the Central Government and subject to such conditions as that Government may think fit to impose, to raise funds in such manner and offer such security therefor as they think fit ;

(*c*) to carry out such repairs as may be necessary in respect of any machinery, rolling stock, buildings, works or other property in their custody ;

(*d*) to do all acts necessary for making, maintaining, altering or repairing and using the railway of the railway company ;

(*e*) to employ such persons as may be necessary for enabling them to efficiently discharge their duties, and define the conditions of service of such employees.

(2) The directors may, with the previous sanction of the Central Government, cancel or vary, either unconditionally or subject to such conditions as they think fit to impose, any contract or agreement entered into between the railway company and any other person at any time before the issue of the notified order under section 3, if the directors are satisfied that such contract or agreement is detrimental to the interests of the railway company.

53

6. *Statement of affairs to be made to directors.*—(1) On the issue of a notified order under section 3, there shall be made out and submitted to the directors a statement as to the affairs of the railway company, verified by affidavit and containing the following particulars, namely :—

(*a*) the assets of the railway company, stating separately the cash balance in hand and at the bank, if any ;

(*b*) the debts and liabilities ;

(*c*) the names, residences and occupations of the creditors, stating separately the amount of secured debts and unsecured debts and, in the case of secured debts, the particulars of the securities, their value and the dates when they were given ;

(*d*) the debts due to the railway company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom ;

(*e*) such other particulars as may be prescribed.

(2) The statements shall be submitted by one or more of the persons who was or were holding office as a director or as directors of the railway company immediately before the issue of the notified order under section 3 or by the secretary, manager or other chief officer of the railway company who was holding office as such before the issue of the notified order as the directors may require in each case, and the statement shall be submitted within such time as may be so required.

(3) If any person, without any reasonable excuse, knowingly and wilfully makes default in complying with the requirements of this section, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

7. *Statements by beneficial owners of shares of railway company.*—Any person who has any interest in any share of the railway company which stands in the name of another person in the register of share-holders of the railway company shall, within such period as may be specified by the Central Government by notified order, make a declaration in such form as may be prescribed (which shall be countersigned by the person in whose name the share is registered) to the railway company declaring his interest in the share, and notwithstanding anything contained in any other law or in any contract to the contrary, a person who fails to make a declaration as aforesaid in respect of any share shall be deemed to have no right or title whatsoever in or to that share :

Provided that nothing in this section shall affect the right of any person who has an interest in any such share to establish in a court his right thereto if the person in whose name the share is registered refuses to sign that declaration as required by this section.

8. *Power of directors to institute proceedings against past directors, etc., for damages.*—(1) The directors may, if they are satisfied that it is necessary in the interest of the railway company or in the public interest so to do, institute in the name of the railway company such proceedings as they think fit for the recovery of damages for any fraud, misfeasance or other misconduct in connection with the management of the affairs of the railway company committed by any person before the issue of the notified order under section 3 or for the recovery of any property of the railway company which has been misapplied or wrongfully retained by any person.

(2) No director shall be personally liable for any costs or expenses incurred in connection with any proceedings instituted by virtue of this section.

9. *Penalties.*—If any person wilfully destroys or fails to deliver to the directors when required any books of account, registers or any other documents in his custody relating to the business of the railway company or retains any property of the railway company, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

54

10. *Filling up of vacancies among directors.*—(1) Casual vacancies occurring in the body of directors, whether caused by death, resignation or otherwise, shall be filled by nomination by the Central Government.

(2) No act of the directors shall be called in question on the ground merely of the existence of any vacancy among the directors or any defect in the appointment of any of them.

11. *No right to compensation for termination of contract of managing agent or any other contract.*—(1) Notwithstanding anything contained in the Companies Act or in any other law for the time being in force, no managing agent shall be entitled to any compensation for the premature termination under this Act of any contract of management entered into by him with the raiway company, and no person shall be entitled to compensation in respect of the cancellation or variation under this Act of any other contract or agreement.

(2) Nothing contained in sub-section (1) shall affect the right of any such managing agent or person to recover from the railway company moneys recoverable otherwise than by way of such compensation.

12. *Cancellation of appointment of directors.*—(1) If at any time it appears to the Central Government that the purpose of the notified order appointing the directors has been fulfilled or that for any other reason it is unnecessary that the notified order should remain in force, the Central Government may, by notified order, cancel the appointment of directors made under this Act.

(2) On the cancellation of any such appointment as is referred to in sub-section (1), the Central Government may—

(*a*) direct that all the property, effects and actionable claims of the railway company shall revest in the persons in whom they were vested before the issue of the notified order under section 3; or

(*b*) reconstitute by fresh appointment a new body of persons to take charge of the management and administration of the whole affairs of the railway company, whether as directors or managers or in any other capacity:

Provided that no such fresh appointment shall be made except in pursuance of a resolution passed by the share-holders of the railway company at a meeting called for the purpose by the directors appointed under section 3.

(3) The Central Government may, at any time before the issue of the notified order under sub-section (1), take such action as may be necessary under clause (*b*) of sub-section (2) for the purpose of making any fresh appointments.

13. *Application of the Companies Act.*—(1) Notwithstanding anything contained in the Companies Act or in the memorandum or articles of association of the railway company, but subject to the other provisions contained in this Act,—

(*a*) it shall not be lawful for the share-holders of the railway company or any other person to nominate or appoint any person to be a director of the railway company;

(*b*) no resolution passed at any meeting of the share-holders of the railway company shall be given effect to unless approved by the Central Government;

(*c*) no proceeding for the winding-up of the railway company or for the appointment of a receiver in respect thereof shall lie in any court, unless by or with the sanction of the Central Government.

(2) Subject to the provisions contained in sub-section (1) and to the other provisions contained in this Act and subject to such exceptions, restrictions and limitations as the Central Government may by notified order specify, the Companies Act shall continue to apply to the railway company in the same manner as it applied thereto before the issue of the notified order under section 3.

14. *Effect of Act on other laws.*—The provisions of this Act and of any notified order made thereunder shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in the memorandum or

55

articles of association of the railway company or in any other instrument having effect by virtue of any law other than this Act, but save as aforesaid the provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being applicable to the railway company.

15. *Directors to be public servants.*—Every director appointed under section 3 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

16. *Delegation of powers.*—The Central Government may, by notified order, direct that all or any of the powers exercisable by it under this Act, except the powers given to it under section 3 to apply the provisions of this Act to any railway company, or the powers given to it under section 12 or section 18 may be exercised by any State Government, and where any powers are so delegated, they shall be exercised subject to such directions as the Central Government may issue from time to time.

17. *Protection of action taken under Act.*—(1) No suit, prosecution or other legal proceeding shall lie against any director in respect of anything which is in good faith done or intended to be done in pursuance of this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or any State Government or any director for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act.

18. *Power of Central Government to acquire railway of railway company.*—(1) Where under any instrument, having effect by virtue of any law other than this Act or by virtue of an agreement arrived at between the parties, provision is made for the purchase by a person or local authority or the State Government of a railway which is the property of a railway company on payment of the value thereof calculated in the manner and subject to the conditions specified in the instrument, the Central Government shall also have the same right to purchase the railway on the same terms and subject to the same conditions as the person, local authority or the State Government has under the instrument.

(2) If in respect of any railway the Central Government exercises its right of purchase under this section, any person, local authority or State Government, in whom or in which a similar right is vested under the instrument, shall be deemed to have become disentitled to exercise the same.

19. *Power to make rules.*—(1) The Central Government may, by notified order, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, any rules made under sub-section (1) may provide for—

(*a*) the manner in which or the conditions subject to which the directors or managing agents of a railway company may exercise their powers under this Act;

(*b*) the additional particulars which a statement under section 6 should contain;

(*c*) the form in which a declaration under section 7 may be made;

(*d*) the manner in which books of account shall be maintained by the directors and audited;

(*e*) the submission of specified or periodical returns and reports by the directors to any specified authority in connection with the affairs of the railway company.

20. *Repeal of Ordinance II of 1951.*—The Railway Companies (Emergency Provisions) Ordinance, 1951 (II of 1951) is hereby repealed:

Provided that the repeal shall not affect—

(*a*) the previous operation of the said Ordinance, or

(*b*) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said Ordinance, or

S6

(c) any investigation, legal proceeding or remedy in respect of any such penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture, or punishment may be imposed as if this Act had not been passed :

Provided further that, subject to the preceding proviso, anything done or any action taken (including any notified order issued, appointment made or direction given under the said Ordinance) shall be deemed to have been done or taken under the corresponding provision of this Act and shall continue in force accordingly, unless and until superseded by anything done or any action taken under this Act.

STATEMENT OF OBJECTS AND REASONS

Although all the major Railways in the country are now under Government management, a few narrow-gauge light Railways are still being managed by private companies. Government have statutory control over these Railways in respect of fares and freight rates, and may enforce safety regulations under the Indian Railways Act, 1890 ; but they have no power to ensure that the day to day administration of the Railways by the companies is in the best interests of the public. Of late Government have been receiving complaints regarding mismanagement by some of these companies thereby causing a great deal of inconvenience to the normal life of the community. It became imperative, therefore, that Government should, in the public interest, take powers to intervene in cases where in the opinion of Government a situation has arisen in the affairs of Railway company which prejudically affects the convenience of persons using the Railway or causes serious dislocation in any trade or industry using the Railway or causes serious unemployment among the persons employed on the Railway.

An Ordinance entitled the Railway Companies (Emergency Provisions) Ordinance, 1951, was accordingly promulgated on the 14th July, 1951. The Ordinance was of general nature and provided for the application thereof to a delinquent Railway company by a notified order. The result of such a notification would be that Government is enabled to appoint a new board of directors for the Railway company in supersession of the existing board of directors and any contract of management between the Railway company and any managing agent would be automatically terminated. The intention underlying these provisions is that the company should be put back into its normal position when it would be possible to restore the management of the company to its old board of directors or to a new board of directors appointed in pursuance of a resolution passed by the shareholders of the company. The Ordinance contains the usual provision for delegation of powers so that in suitable cases power could be delegated to the State Government to administer the affairs of a Railway company within its jurisdiction, the management of which has to be taken over by the Government.

In the case of the Baraset-Basirhat Light Railway Company which owns a narrow-gauge line about 52 miles long in West Bengal, the Government of West Bengal caused an investigation to be made into the affairs of the company by a high-level committee who found considerable evidence of serious mismanagement in the affairs of the company which culminated in a labour strike and consequent suspension of railway service from the 14th April, 1951. The Ordinance was therefore, made applicable to this Railway company and powers in respect of this company have been delegated to the Government of West Bengal under the Ordinance.

The present Bill seeks to replace the Ordinance and to validate all action taken thereunder.

NEW DELHI ;
The 11th August, 1951.

K. SANTHANAM.

M. N. KAUL,
Secretary.

Printed by the Director of Printing, Stationery and Publications at the Government Press, Bangalore.